

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 24-30372
Chapter 7

Fahad Dunkal,

Debtor.

**NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY**

TO: Debtor and Attorney for Debtor; Patti J. Sullivan, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. BMW Bank of North America, a secured creditor of the Debtor, by its attorney, moves the court for the relief requested below, and gives notice of hearing herewith.

2. The court will hold a hearing on this motion at **1:30 pm on Wednesday, April 24, 2024**, before the Honorable Katherine A. Constantine, in courtroom No. 8 West, 8th Floor, at the United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and served not later than Wednesday, April 17, 2024, which is seven days before the time set for the hearing (including Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. BMW Bank of North America seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor.

5. The petition commencing this Chapter 7 case was filed on February 12, 2024 and the case is now pending in this court. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. BMW Bank of North America holds a valid, perfected interest in a 2022 BMW X7, vehicle identification number 5UXCW2C09N9J80194 (the "Vehicle").

7. Copies of BMW Bank of North America's agreement with the Debtor (the "Contract") and evidence of perfection of BMW Bank of North America's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. As of February 17, 2024, payments due under the terms of the Contract for the months of December 2023 through February 2024 totaling \$2,374.84 have not been made by the Debtor. BMW Bank of North America has not been provided with evidence of current insurance on the Vehicle.

9. As of February 17, 2024, the balance due under the Contract is \$49,593.11. On information and belief, the J.D. Power Values f/k/a N.A.D.A. Official Used Car Guide average trade-in value of the Vehicle is approximately \$61,525.00.

10. BMW Bank of North America's interest is depreciating, while there is a failure to make payments by the Debtor. BMW Bank of North America does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor to make payments pursuant to the Contract or otherwise provide BMW Bank of North America with adequate protection of its interest in the Vehicle and the failure of the

Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling BMW Bank of North America to relief from the stay.

12. The Vehicle is depreciating therefore BMW Bank of North America requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, Christopher Dick, or some other representative, will testify on behalf of BMW Bank of North America.

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, BMW Bank of North America will repossess the Vehicle promptly upon the court signing the order.

WHEREFORE, BMW Bank of North America respectfully moves the court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit BMW Bank of North America to foreclose its interest in the Vehicle in accordance with nonbankruptcy law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: April 8, 2024

STEWART, ZLIMEN & JUNGERS, LTD.

By s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
2860 Patton Road
Roseville, MN 55113
651-366-6380 Ext. 111

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VERIFICATION

I, Christopher Dick, a Bankruptcy Manager of BMW Bank of

North America declare that the factual allegations made in the document affixed hereto are true and correct to the best of my knowledge, information and belief. In addition, this verification is made on my personal knowledge, sets forth only facts that would be admissible in evidence and I am competent to testify to the matters stated in such document.

Date: 4/4/2024



BMW Bank of North America
Christopher Dick

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY***

BMW Bank of North America submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

BMW Bank of North America holds a perfected interest in a 2022 BMW X7 with a vehicle identification number 5UXCW2C09N9J80194 (the "Vehicle"). As of February 17, 2024, payments due under the terms of the Contract for the months of December 2023 through February 2024 totaling \$2,374.84 have not been made by the Debtor. As of February 17, 2024, the balance due under the Contract is \$49,593.11. On information and belief, the J.D. Power Values f/k/a N.A.D.A. Official Used Car Guide average trade-in value of the Vehicle is approximately \$61,525.00. BMW Bank of North America has not been provided with evidence of current insurance on the Vehicle.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the contract between the Debtor and BMW Bank of North America has otherwise not been provided with adequate protection of interest in the Vehicle. BMW Bank of North America has not been provided with evidence of current insurance on the Vehicle. Such failure constitutes cause, within the meaning of

Section 362(d)(1), entitling BMW Bank of North America to relief from the stay. United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). As of February 17, 2024, the balance due under the contract is \$49,593.11. The J.D. Power Values f/k/a N.A.D.A. Official Used Car Guide average trade-in value of the Vehicle is approximately \$61,525.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

CONCLUSION

For all the reasons set forth herein, BMW Bank of North America is entitled to an order terminating the automatic stay of 11 U.S.C. §362 and authorizing it to foreclose its interest in the Vehicle in accordance with nonbankruptcy law.

Dated: April 8, 2024

STEWART, ZLIMEN & JUNGERS, LTD.

By s/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
2860 Patton Road
Roseville, MN 55113
651-366-6380 Ext. 111

In re:

Fahad Dunkal

Debtor.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Case No. 24-30372

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, Ltd., attorney(s) licensed to practice law in this court, with office address of 2860 Patton Road, Roseville, MN 55113, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion for Relief from Stay** upon each of the entities named below by electronic transmission or by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid addressed to each of them as follows:

United States Trustee
1015 US Courthouse
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor)
Jeffrey H. Butwinick
7800 Metro Parkway
Suite 300
Bloomington, MN 55425

(Trustee)
Patti J. Sullivan
1595 Selby Ave Ste 205
St Paul, MN 55104

(Debtor)
Fahad Dunkal
17866 Evershed Way
Lakeville, MN 55044

Maryan Mohamed
18871 Dunbury Ave.
Farmington, MN 55044

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: April 8, 2024

Signed: s/ Bradley J. Halberstadt

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ORDER GRANTING RELIEF FROM STAY

This case is before the court on the motion of BMW Bank of North America for relief from the automatic stay imposed by 11 U.S.C. §362(a).

Based on the record, the court finds that grounds exist under 11 U.S.C. §362(d) to warrant relief.

IT IS ORDERED:

1. The motion for relief from stay is granted as follows.
2. The automatic stay imposed by 11 U.S.C. §362(a) is terminated such that the movant may exercise its rights and remedies under applicable nonbankruptcy law with respect to the following property:

2022 BMW X7, VIN: 5UXCW2C09N9J80194

3. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated:

Katherine A. Constantine
United States Bankruptcy Judge